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MONTANA PROSECUTOR

MARCH/APRIL, 1979 Vol. 3, No. 1

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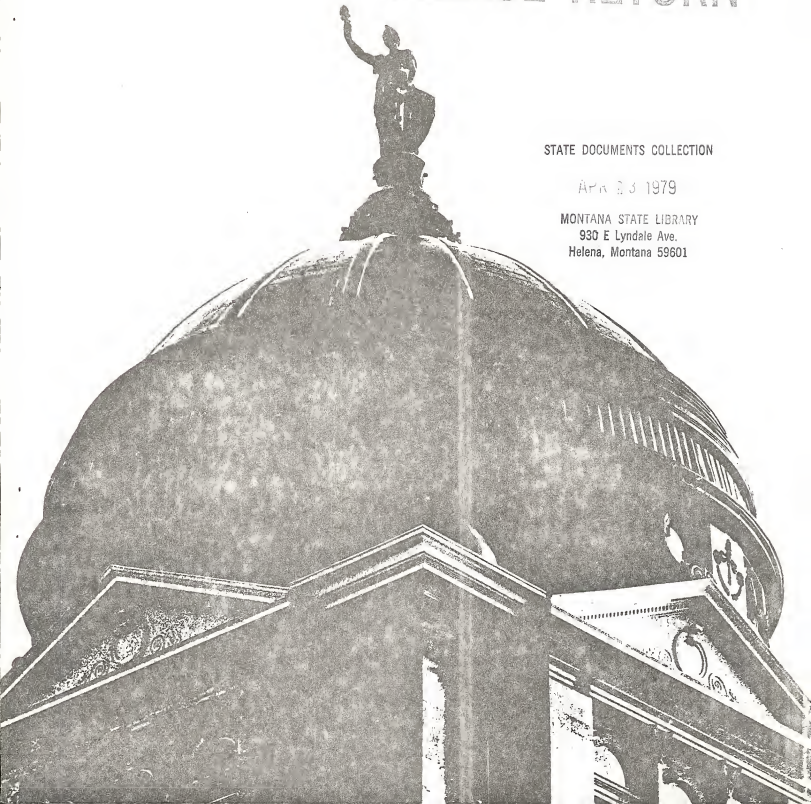


INTRODUCTORY NOTES

All county attorneys and deputy county attorneys are reminded that the Department of Justice will present a spring training seminar entitled "Crimes Against Persons" and a legislative update on May 9, 10, and 11, 1979 at the Holiday Inn in Great Falls.

Any person interested in purchasing Attorney General's Opinions, Volumes 35 and 36, which are those rendered by former Attorney General Woodahl from 1973 to 1976, may do so by contacting Susan Hanson, Attorney General's Office, State Capitol, Helena, Montana 59601 (449-2026). The cost is $25.00.

Included within this issue are an updated list of Montana Sheriffs and two brochures concerning two films centering on different aspects of the criminal justice system. Some county attorneys have suggested that the Association purchase one or both of these films for use by county attorneys and other law enforcement agencies. Any comments you may have should be directed to Marc Racicot.

Enclosed with this issue is an updated copy of the Brief Bank Index, which contains reference to all briefs received by March 1, 1979.

RECENT CASES AND NOTES

VENUE - HEARSAY

The Texas Court of Criminal Appeals reversed the mass-murder convictions of Elmer Wayne Henley because of the trial judge's refusal to hold a pretrial hearing on Henley's motion for change of venue. Henley v. State, 24 Cr L 2343, 12/20/78.

MICHIGAN PROSECUTORIAL ETHICS CASE

An Officer and An Assistant Prosecuting Attorney Questioned Defendant Without His Attorney At Defendant's Request: It's An Ethical Violation But Not Reversible Error. The Michigan Supreme Court was unanimous in ruling that a prosecutor violated the Code of Professional Responsibility when he took part in questioning the defendant without notifying defense counsel. The attorney is not excused from compliance with the rule by the fact that defendant requested the meeting and asked that it take place without his attorney present. Two of the justices saw the violation as "relatively innocuous" under these circumstances, but the other five were firm in their condemnation of the prosecutor's actions and all seven referred the incident for bar disciplinary action. The error, however, did not benefit defendant. Four justices held that codes of professional conduct play no part in questions of admissibility of evidence. Authorities "acquiesced in a course of conduct initiated by a defendant who knew precisely what he was doing." Admission of his statement is not "unfair", "shocking," or a violation of due process of law. Three justices would suppress the statement. People v. Ernest Green, No. 59674, 1/26/79.

CROSS-EXAMINATION - PROSECUTOR

Barring cross-examination of a police officer about why a coparticipant in the crime was not prosecuted was proper. The decision to prosecute rests within the sound discretion of the prosecutor. State v. Williams (Ariz.) 587 P.2d 1177.

ARGUMENT - COMMENT ON SILENCE

Rebuttal argument that the prosecutor was not trying to hide something, as the defense counsel implied, and that the reason the evidence didn't come out was the defense counsel suppressed it, coupled with a question which established that the defendant asked for an attorney, did not constitute a comment on defendant's failure to take the stand. Even if the spirit of the law was violated, and the Arizona Supreme Court does not think so, the defendant took the stand and admitted participation in the crime, so the error was harmless. State v. Williams (Ariz.) 587 P.2d 1177.

RIGHT TO COURT-APPOINTED COUNSEL FOR POT FINE

In rejecting the state's argument that the offense was merely an infraction, the California Supreme Court has concluded that an indigent defendant charged with possession of less than one ounce of marijuana while facing a maximum of a $100 fine had a right to court-appointed counsel and a jury at his prosecution. Tracy v. Municipal Court, 24 Cr.L. 2305 (1-17-79).

REFUSAL TO TAKE BLOOD TEST ADMISSIBLE AT DWI TRIAL

In People v. Thomas, 24 Cr. L. 2296 (1-10-79), the New York Court of Appeals upheld a statute which allowed for the admission into evidence of a DWI defendant's refusal to take a blood test.

NEW JUVENILE OFFENDER LAW WAS CONSTITUTIONAL

The New York County Court did not find any equal protection problem with New York's new statute which lowered the age of criminal responsibility for certain violent crimes. Thus, the fourteen-year-old defendant charged with robbery and rape of an 82 year old woman was properly held accountable in adult court. People v. Williams, 24 Cr.L. 2286 (1-10-79).

PRIVACY RIGHT PERMITS MENTAL PATIENT TO REFUSE NON-EMERGENCY TREATMENT

An involuntary mental patient at a state institution has a right to refuse treatment, including medication, in non-emergency situations, so says the United States District Court for the District of New Jersey in Rennif v. Klein, 24 Cr. L. 2215 (12-13-78).

TERRY FRISK MAY INCLUDE LIMITED VEHICLE SEARCH

In United States v. Rainone, 24 Cr.L. 2238 (12-20-78), the Court of Appeals for the Seventh Circuit concluded that the protective search rationale of Terry v. Ohio, 392 U.S. 1 (1968), extended to a minimal search of the automible from which the suspects had been removed. Therefore, a limited search of the front and back seats of the defendant's automobile which uncovered dynamite did not violate the Fourth Amendment.

NEGLIGENT SUPERVISION OF POLICE OFFICERS INSUFFICIENT TO SUPPORT 1983 ACTION

Leite v. City of Providence, 24 Cr.L. 2334 (1-24-79), held that a citizen who claimed to have been beaten by police must show more than mere negligent supervision of those officers in order to maintain a 1983 action. The United States District Court for the District of Rhode Island concluded the city is not liable unless its supervisory officials participated in some way in a constitutional violation or exhibited a deliberate indifference to the deprivation of the plaintiff's constitutional rights.

BURNED MARIJUANA ODOR SUPPLIED PROBABLE CAUSE FOR SEARCH

The Nebraska Supreme Court has determined that when a patrolman, who had stopped a truck for a broken taillight, smelled the odor of burned marijuana coming from the driver's compartment, sufficient probable cause existed to enable the patrolman to search the truck. State v. Ruzicka, 202 Neb. 257, ___ N.W.2d ___ (1979).

DANGEROUS DRUGS - STANDING

Defendant lacked standing to contest the validity of the legislature giving the pharmacy board the power to add drugs to the prohibited dangerous drug list. The phenobarbitol he was charged with possessing was a barbituric acid derivative, and the legislature had declared that barbituric acid derivatives were dangerous drugs. State v. Varela (Ariz.) 587 P.2d 1173.

GUILTY PLEA

The rule that a guilty plea waives all non-jurisdictional defects is applied here and defendant's guilty plea waived the magistrate allowing the State to reopen the preliminary hearing and present further evidence. The same rule also operated to waive the failure of the magistrate to rule on defendant's motion to suppress prior to accepting the guilty plea. State v. Diaz (Ariz.) 588 P.2d 309.

INSTRUCTIONS - AGGRAVATED ASSAULT

A court is not required to give a lesser included offense instruction on aggravated assault where the victim died as a result of that aggravated assault. State v. Melendez (Ariz.) 588 P.2d 294.

ACCOMPLICE

Evidence, which established that defendant, although free to disengage himself from his friend, continued to ride in a friend's car after he knew his friend had just committed a burglary, was sufficient to support defendant's conviction as an accomplice. State v. Gervais (Me.) 394 A.2d 1183.

PRIOR CONVICTION ENHANCED PUNISHMENT

A prior conviction, for enhanced punishment purposes, is not a conviction until the judgement of conviction is entered. Defendant could not be found guilty of petty theft with a prior conviction where judgement had not been entered on the prior conviction, even though he had already pled guilty to the prior theft when he committed the second petty theft. State v. Lopez (Ariz.) 587 P.2d 1184.

VOIR DIRE

The purpose of voir dire is to uncover prejudice, not to precondition the jurors with preliminary instructions of law and facts on the case. Defendant's proposed voir dire questions were designed to condition jurors to trial evidence in a murder by torture case, were designed to commit the jurors to positions prior to hearing evidence and were properly barred. State v. Melendrez (Ariz.) 588 P.2d 294.

ARGUMENT - CHAIN OF CUSTODY

Where the testimony of the prosecution witnesses and the defense witnesses was in irreconcilable conflict, prosecutor's closing argument that someone was committing "perjury" was not an assertion of personal opinion nor an attribution of other offenses by the defense witnesses. Case also deals favorably with failure to call two people who handled the evidence since all they did was pass on a sealed package. Gilliam v. State (Ind.) 383 N.E.2d 297.

BRUTON

In a careful analysis the Kansas Supreme Court holds that admission of "exculpatory" statements of each codefendant in their joint trial did not violate Bruton. Each statement denied participation, did not implicate the other codefendant, and was not hearsay, since the statements were offered as verbal acts which later evidence showed were false, thus indicating guilty knowledge. State v. White (Kan.) 587 P.2d 1259.

CHAIN OF CUSTODY

Handgun allegedly used by defendant was sufficiently identified to be admitted into evidence where police officer who picked up gun at scene and turned it into the police station positively identified weapon by its serial number, which he recorded at the scene. Wolfe v. State (Ind.) 383 N.E.2d 317.

DEATH PENALTY - FELONY MURDER

Imposition of two death penalties upon defendant's conviction for two counts of felony murder was not so disproportionate to nature of offense as to shock moral sense of community and accordingly did not constitute cruel and unusual punishment. Clark v. State (Ark.) 573 S.W.2d 622.

DOUBLE JEOPARDY - PROBATION REVOCATION

Probation revocation proceeding is of an administrative nature, not judicial, and thus, twice subjecting defendant to probation revocation based upon same alleged violation was not barred by double jeopardy or res judicata. Davenport v. State (Tex.Cr.App.) 574 S.W.2d 73.

IMMUNITY

Grant or denial of immunity is within sole discretion of the executive branch of the Government, and neither courts nor defense attorney may force prosecutor to compel testimony of defense witness. United States v. Rocco (3rd. Cir.) 587 F.2d 144.

INTERROGATION

Police act of displaying tin foil packets containing heroin to defendant and telling him they found them in his residence (via a valid search warrant), although eliciting an incriminating response from defendant, was not an interrogation and did not require the giving of Miranda rights. Vines v. State (Md.Sp.App.) 394 A.2d 809.

JUVENILES

The California Supreme Court holds that a juvenile need not be afforded all the evidentiary privileges that an adult gets, and upholds a juvenile adjudication based upon the unsupported testimony of an accomplice, even though such testimony is statutorily insufficient to sustain an adult conviction. In Re Mitchell P. (Cal.) 587 P.2d 1144.

PRIOR CONSISTENT STATEMENT

Where defense claim of contrivance by prosecution witness was clearly apparent, it was not error to allow prosecutor, during direct examination, to introduce witness' prior consistent statement, rather than wait until redirect. Commonwealth v. Saarela (Mass.) 383 A.2d 501.

RAPE

Trial court properly precluded defense from going into rape victim's prior sexual conduct where the purpose was to show whether victim (17 year old) knew what type of object penetrated her vagina, because lack of sexual experience would not necessarily be probative. People v. Nemie (App.) 151 Cal.Rptr 32.

PRIOR CRIMES

Evidence by one girl that, after being raped by several men and knocked out, upon regaining consciousness defendant was getting off her and stated that he was going over to the other girl was properly admitted in defendant's trial for raping the other girl. The witness' story corroborated the other girl's story defendant raped her, which defendant denied, and was properly admitted under Rule 404. United States v. Sangrey (9th Cir.) 586 F.2d 1312.

VENUE

The venue of an offense may be proven like any other fact in a criminal case. Venue need not be established by direct testimony, nor in the words of the information, but, if from the facts in evidence the only rational conclusion which can be drawn is that the crime was committed in the county alleged the proof is sufficient. State v. Laflin (Neb.) 272 N.W.2d 376.

VOLUNTARINESS OF STATEMENT

Despite fact that arrest was illegal, confession made subsequent to arrest was admissible. Considerations determining admissibility, made on a case by case basis, are, the voluntariness of the statement, giving of Miranda warnings, temporal proximity of arrest and confession, presence of intervening circumstances, and particularly, purpose and flagrancy of official misconduct. State v. Turner (Me.) 394 A.2d 798.

PROFESSIONAL ETHICS OPINION - CONFLICT OF INTEREST FOR PROSECUTORS

In the latest issue of The Prosecutor, the Journal of National District Attorney's Association, Volune 14, No. 2, page 122, a copy of an opinion recently rendered by the Professional Ethics Committee of the Illinois Bar Center regarding the question of conflict of interest for prosecuting attorneys who also engage in private practice is set forth. The opinion is that of the aforesaid Committee on Professional Ethics and not necessarily that of NDAA.

Basically, the opinion states that (1) it is professionally improper for a prosecuting attorney who is prosecuting a married defendant in a criminal action to represent the spouse of the defendant in an action which seeks dissolution of marriage, even though the two actions are not based upon the same set of facts; and (2) the disqualification of the prosecuting attorney to represent the spouse extends to his partners, associates, and firm. The full opinion can be found in the issue of the NDAA publication cited above.

PROSECUTION ARGUMENT - GRIFFIN COMMENTS - POINTING TO THE DEFENDANT

Where the prosecuting attorney stated, "I've never heard an explanation for why this man [referring to the defendant] told Mr. Young [prosecution witness] the story about having a mine down in Mexico," while pointing to the defense table, was a proscribed comment upon the failure of a defendant to testify under the doctrine of Griffin v. State of California, 380 U.S. 609 (1965). As the Court notes: "Only comments on the failure of defendant to testify personally are objectionable. A comment that certain facts brought out by the prosecution are uncontradicted is not objectionable. . . .An exception to this rule occures when it appears that the defendant is the only one who could explain or contradict the evidence

offered by the state. . ." From the testimony in the case, it was clear that the defendant was the only person who could have told the prosecution witness the story alluded to. "The prosecutor's pointing toward appellant emphasizes the appellant's failure to take the witness stand to testify to his side of the story. [par.] We hold this to be an unconstitutional comment on the accused's right to remain silent." State v. Still, 582 P.2d 639, Ariz., 1978.

SEARCH WARRANTS - PROBABLE CAUSE - INFORMER - CREDIBILITY - DECLARATIONS AGAINST PENAL INTEREST

It has been held that the probable credibility of an identified informant may be sufficiently shown on the sole basis that his statements establishing probable cause for the issuance of a search warrant were declarations against his penal interests. The instant ruling turned on the fact that the informant was identified in the affidavit and the nature of his declaration. The Court did not reach the question of the credibility of an unidentified informant on the sole basis of his declarations against penal interests. Merrick v. State, 389 A.2d 328, Md., 1978.

EVIDENCE OF DEFENDANT'S EXERCISE OF CONSTITUTIONAL RIGHTS - REQUEST FOR ATTORNEY - INSANITY DEFENSE

No error was committed in a homicide prosecution in admitting evidence of defendant's request for an attorney after being given Miranda warnings, where this evidence was admissible on the issue of defendant's sanity. "Evidence of defendant's demeanor at the time of his arrest is relevant to the question of his sanity and is therefore admissible. When the defendant has the presence of mind to request an attorney, this is evidence of his sanity and is admissible as such." Sulie v. State, 379 N.E.2d 455, Ind., 1978.

BLOOD TESTS - UNCONSCIOUS OR UNCOMMUNICATIVE DEFENDANTS

The Supreme Court of Minnesota has held that when the driver of a motor vehicle involved in a fatal accident is unconscious or uncommunicative and has not been placed under arrest, a blood sample may be taken from him without his consent if there is probable cause to believe that he is guilty of criminal negligence, and the failure to conduct an immediate sampling would result in the loss of the blood-alcohol evidence. State v. Oevering, 268 N.W. 2d 68, Minn., 1978.

IDENTIFICATION EVIDENCE - LINEUPS - RIGHT TO COUNSEL - KIRBY V. UNITED STATES

In Kirby v. United States, 406 U.S. 682 (1972), the United States Supreme Court held that a defendant's right to counsel attaches only "at or after the time that adversary judicial proceedings have been intitiated against him." In the instant case the Court ruled that a warrantless arrest on probable cause does not trigger the right to counsel at a lineup under

Kirby, even though the defendant is ultimately charged and convicted of the crime for which he was arrested. "Examples given in Kirby of the initiation of adversary judicial criminal proceedings - formal charge, preliminary hearing, indictment, information, or arraignment - indicate that the relevant time is when 'the government has committed itself to prosecute' and 'a defendant finds himself faced with the prosecutorial forces of organized society.' . . .An arrest on probable cause without a warrant, even though that arrest is for a crime with which the defendant is eventually charged, does not intitiate adversary judicial criminal proceedings, and therefore [defendant] has no constitutional right to counsel at the lineup conducted subsequent to his arrest but before he was formally charged." Caver v. State of Alabama, 577 F.2d 1188, 5th Cir., 1978.

CHEMICAL TESTING - CONSUMMATION OF ENTIRE SAMPLE - DUE PROCESS

The Supreme Court of Minnesota has held that where the State in good faith finds it necessary to entirely consume, for the purpose of chemical analysis, the only sample of certain incriminating physical evidence, the admission of the test results against the defendant at trial does not violate due process. "Due Process does not require that criminal conduct go unpunished simply because the perpetrator leaves only a small sample of incriminating evidence behind. In this case, the testimony of [the State's witness] clearly indicates that it was absolutely necessary to exhaust the entire blood stain in order to procure a reliable test result. Moreover, [defendant] does not suggest, and there is no evidence in the record, that the exhaustion of the blood stain was accomplished in bad faith by State personnel. For these reasons, we conclude that [defendant's] due process rights were not violated by the reception of the results of the blood stain analysis." State v. Carlson, 267 N.W.2d 170, Minn., 1978.

INTOXICATION - TEMPORARY & PSYCHOTIC STATE

The Supreme Court of Wisconsin has held that a temporary psychotic state which lasts only for the period of intoxication and which is brought into existence by the interaction of a "stormy personality" and voluntary intoxication, does not constitute a mental disease which would be a defense to murder. The Court stated that the possibility of a psychosis being triggered by an event not within the defendant's control did not alter the fact that defendant had control over the drug consumption which in fact triggered the psychotic episode during which the crime was committed. ["Defendant] may fairly be held responsible for his actions while he was intoxicated and temporarily psychotic because individual volition can play a major part in producing that condition." State v. Kolisnitshcenko, 267 N.W.2d 321, Wis, 1978.

AGENCY DEFENSE - NARCOTICS CASES

The Court of Appeals of New York reiterates its view that the existence of an agency relationship furnishes no defense on a charge of mere criminal possession of a controlled substance. "This proposition obtains regardless of whether the charged possession involved a minimum separate quantity or aggregate amount of such a substance or substances. . . and even where the accusation of possession of certain specific controlled substances is predicated also on a previous conviction for possession of one or more of those named substances. . . It would not apply, however, where the possession charged also encompasses another element, such as intent to sell. . ." People v. Sierra, 379 N.E.2d 196, N.Y., 1978. The same Court held that an agency charge is not required simply because it appears that a seller of narcotics did not personally grow, import, or manufacture the illicit substance. "If it were, an agency charge would be mandated as a matter of course when sale of narcotics is alleged. Instead, the agency charge should be reserved for cases where there is at least some evidence, however slight, to support the inference that the supposed agent was acting, in effect, as an extension of the buyer." People v. Argibay, 379 N.E.2d 191, N.Y., 1978. See also People v. Lam Lek Chong, 379 N.E.2d 200, N.Y., 1978. In yet another case, People v. Roche, 379 N.E.2d 208, N.Y., 1978, the Court, per Fuchsber, J., with one Judge concurring and two Judges concurring in the result, states that agency is not an affirmative defense to the charge of sale of drugs, but rather it may negate the existence of an essential element of the crime, namely the "sale". The same Court holds that agency is not a defense to a charge of criminal possession of a controlled substance. See also, People v. Sierra supra.

WITNESS - IMPEACHMENT - PRIOR INCONSISTENT STATEMENT - READING STATEMENT

Where a defense witness admitted having made a prior inconsistent statement to the police, it was reversible error to allow the prosecutor to read the prior inconsistent statement to the jury, which statement contained remarks highly prejudicial to the defendant. "Proof that the prior inconsistent statement was made can be used for impeachment purposes only, not to show the truth of its content. If a witness distinctly admits having made a prior inconsistent statement his credibilty has been effectively impeached. At this point, the permitted reason for the use of a prior inconsistent statement (impeachment) has been accomplished. Thereafter, proof that the statement was made would not be for impeachment purposes, but rather to show the truth of its content, which is not permissible. Accordingly, if a witness distinctly admits having made a prior inconsistent statement, evidence that the statement was made is inadmissible." State v. Mosely, 360 S.2d 844, La. See, however, the Commission Comment to Rule 801(d)(1), Montana Rules of Evidence which allow the use of prior inconsistent statements as substantive evidence.

PRESENTENCE REPORT - OUT-OF-COURT DECLARATIONS BY UNIDENTIFIED INFORMANT

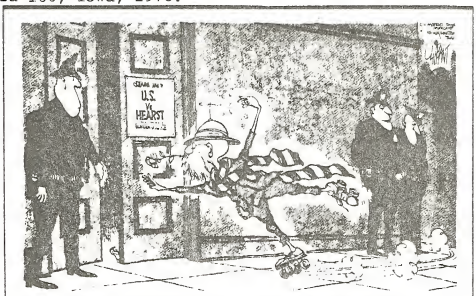
The Second Circuit Court of Appeals had held that the Due Process Clause does not prevent the use in sentencing of out-of-court declarations by an unidentified informant where there is sufficient corroboration by other means. By the same token such use does not violate the Confrontation Clause. United States v. Fatico, 379 F.2d 707, 2nd Cir., 1978.

PROBATION - CONDITIONS - CONSTITUTIONALITY

A condition placed upon a probationer that he was to "refrain from the company of people of a questionable character", was not facially invalid for vagueness. The Court ruled that the quoted phrase had a commonly understood meaning which clearly embraced persons who by reason of prior conviction or reputation were generally regarded as engaged in criminal activities. State v. Martinez, 580 P.2d 1282, Hawaii, 1978.

PRIVILEGED COMMUNICATION - HUSBAND-WIFE - CRIME COMMITTED AGAINST STEP-DAUGHTER

In a prosecution for statutory rape brought against the defendant who was charged with having sexual intercourse with his step-daughter, the testimony of defendant's wife, who was the victim's mother, was admissible in spite of the fact that a statute (I.C.A. Sections 622.7, 698.1) provided that neither husband nor wife shall in any case be a witness against the other except in a criminal prosecution for a crime committed one against the other. "Some courts have held a crime against the child of a spouse is a crime against the spouse. . .We, too have said the testimony of one spouse is admissible against the other in a number of instances where the crime is not one committed directly against the spouse. As in incest, the gravamen of the offense in the present case is that the sexual offense was committed with the spouse's daughter. The fact that it was the defendant's step-daughter, rather than his real daughter, does not change the character of the act so far as the mother is concerned. It is just as much an offense against her in one case as in the other." State v. Hubbs, 268 N.W.2d 188, Iowa, 1978.



'And now the defense calls the psychiatrists...'

FREEDOM OF RELIGION - FREE EXERCISE - BIBLE READING BY UNIVERSITY INSTRUCTOR - TERMINATION

Discharge of mathematics teacher at a state university after his repeated refusal to cease his religious activities in the classroom, which consisted of his reading Bible passages at the beginning of his classes, was justified under the religious neutrality principles mandated by the Establishment Clause of the First Amendment and did not infringe upon the teacher's Free Exercise rights. The mere fact that the teacher gave his students the opportunity to leave the classroom if they did not wish to hear the Bible readings did not sufficiently protect the student's constitutional rights, in light of the supervisory position of control held by the teacher over student grading and conduct, and in light of peer pressure and disapproval which would have a "chilling" effect at best. It was not doubted that the teacher's activity would have a coercive impact on a student's free exercise of his or her religious rights. Lynch v. Indiana State U. Bd. of Trustees, 378 N.E.2d 900, Ind. App., 1978.

PLEA BARGAINING - WHO GAINS? WHO LOSES?

Plea bargaining probably benefits society more than the defendant, according to a study released recently by the Law Enforcement Assistance Administration (LEAA). The study -- "Plea Bargaining: Who Gains? Who Loses" -- contradicts the conventional view that criminals usually "get a break" by being allowed to plead guilty to reduced charges. The project analyzed the outcome of more than 5,000 arrests for four crimes--assault, robbery, larceny, and burglary -- in Washington, D.C., in 1974.

Results from a hypothetical trial model indicated the plea bargainer -- except in one category -- did not receive a sentencing concession when compared to a sentence after conviction at trial. Of the guilty pleas, 80 percent in assault cases, 90 percent in larceny cases, and 63 percent in burglary cases were to the most serious charge -- about the same for defendants convicted at trial. The only exception was for robbery, where defendants who pleaded guilty generally received lighter sentences than those convicted at trial. However, the study said this factor was balanced by the certainty of conviction in plea bargaining for robbers as opposed to the number who might be acquitted. The main advantages of plea bargaining, the study suggested, are economical and tactical. Without plea bargaining it said, there would either be many more dismissals because the prosecutorial, defense, and court staffs could not handle the trial load, or many more staff members would have to be hired. The study said plea bargaining may actually reduce crime in the District of Columbia by reducing the number of acquittals.

The study data are from the Prosecutor's Management Information System (PROMIS), created by the Institute for Law and Social Research (INSLAW). The study, conducted by William Rhodes, is one of 17 projects by INSLAW under a $1.5 million,

four-year LEAA grant. Mr. Rhodes noted that plea bargaining has been very controversial. Some experts have urged its elimination, some urge its reform and others feel it is proper. Plea bargaining proponents fear that "trials are expensive both in terms of required monetary resources and in terms of ongoing organizational interest," he said. Opponents of plea bargaining, Mr. Rhodes said, "argue that the substitution of bureaucratic determination of guilt or innocence for a contested trial impedes justice by increasing the chances of erroneous convictions."

J. Patrick Hickey, Director, Public Defender Services, Washington, D.C., does not view the likelihood of innocent defendants being found guilty through plea bargaining as a major concern. "I think it is the defense counsel's obligation to explore the possibility of disposing of a case other than at trial. But we would want the client to agree it was worth exploring, or we wouldn't go along with it," he said.

"If the defense attorney is doing his job right, there shouldn't be many mistakes made where a defendant who would cop a plea would have had much of a chance of being found not guilty had he gone to trial. If there is any serious question of innocence, we are certainly going to trial." Despite the findings of the study, Mr. Hickey said his experience shows there is a "general expectation that the defendant who plea bargains is getting a break for both expressing his culpability and for saving the court system's time and money." Mr. Rhodes said that, "Maybe the defendant and the attorneys don't really understand what is going on. Maybe they think they are getting a break where statistics prove they are not."

The study said that in the District of Columbia the average felony trial requires 48 hours more of the prosecutor's time than does a disposition by plea. A California study, INSLAW said, shows that the average jury trial required about 24 hours and costs the state more than $3,000. In contrast, a guilty plea took about 15 minutes and cost $215. The INSLAW study said the value of plea bargaining to the public becomes more evident when recidivism rates are compared. The data indicated that 45 percent of all defendants acquitted of robbery charges are rearrested within two years. For those acquitted of burglary charges, the two-year rearrest rate is 56 percent. Persons convicted of the same offense, either at trial or by plea bargaining, show much lower rearrest rates. The study has not yet been published but copies are available on loan from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

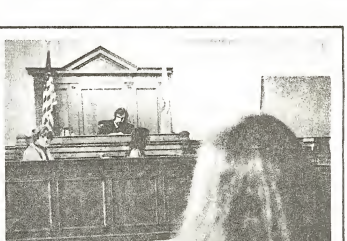
MONTANA SHERIFFS

59725	Beaverhead	Dillon	Raymond L. "Buzz" Davis	683-2383
59034	Big Horn	Hardin	Walter Rider	665-1503
59523	Blaine	Chinook	Homer Duffner	357-3260
59644	Broadwater	Townsend	Jack McCoy	266-3441
59068	Carbon	Red Lodge	Jim Eichler	446-1234
59324	Carter	Ekalaka	Vernon Preuss	775-3333
59401	Cascade	Great Falls	Glenn Osborne	761-6842
59442	Chouteau	Fort Benton	Paul Williams	622-3225
59301	Custer	Miles City	F.W. Damm	232-2237
59263	Daniels	Scoby	Warner Harrison	487-2691
59330	Dawson	Glendive	Howard Hodous	365-5291
59711	Deer Lodge	Anaconda	Robert Johnson	563-5241
59313	Fallon	Baker	Emil Hoem	778-2814
59457	Fergus	Lewiston	Jack Songer	538-3415
59901	Flathead	Kalispell	Al Rierson	755-5300
59715	Gallatin	Bozeman	L. John Onstad	586-4971
59337	Garfield	Jordan	P.T. "Spud" Cremer	557-2540
59427	Glacier	Cut Bank	Jean Gertzen	873-2711
59074	Golden Valley	Ryegate	Eugene Clark	568-2321
59858	Granite	Phillipsburg	Marvin Dagel	859-3511
59501	Hill	Havre	Howard Taylor	265-2512
59479	Judith Basin	Stanford	Dennis Stokes	566-2212
59632	Jefferson	Boulder	Harold DeMers	225-3323
59860	Lake	Polson	Glenn Frame	883-2121
59601	Lewis & Clark	Helena	Charles O'Reilly	442-7880
59522	Liberty	Chester	Dick Burrows	759-5171
59923	Lincoln	Libby	Donald E. Shaw	293-4112
59755	Madison	Virgina City	Roy Kitson	843-5351
59215	McCone	Circle	Robert Jensen	485-3405
59645	Meagher	White Sulphur	Lloyd Frisbe	547-3711
59872	Mineral	Superior	Ronald Boyce	822-4861
59801	Missoula	Missoula	Ray Froehlich	721-1470
59072	Musselshell	Roundup	Brian Neidhardt	323-1402
59047	Park	Livingston	Gary Greene	222-2281
59087	Petroleum	Winnet	Robert Busenbark	429-5551
59538	Phillips	Malta	Mike Camp	654-2350
59425	Pondera	Conrad	W.L. Hammermeister	278-3923
59317	Powder River	Broadus	Millard LaFlamme	436-2333
59722	Powell	Deer Lodge	Dave Collings	846-2711
59349	Prairie	Terry	Gary Larson	637-5738
59840	Ravalli	Hamilton	Dale E. Dye	363-3033
59270	Richland	Sidney	Harold Grinolds	482-2919
59201	Roosevelt	Wolf Point	Don Carpenter	653-1061
59327	Rosebud	Forsyth	Robert Ash	356-2715
59873	Sanders	Thompson Fall	Harvey Schultz	827-3584
59254	Sheridan	Plentywood	Ben Holt	765-1200
59701	Silver Bow	Butte	Lawrence Connors	723-4351
59019	Stillwater	Columbus	Thomas J Blankenship	322-5326
59011	Sweet Grass	Big Timber	Svend Mauland	932-2151
59422	Teton	Choteau	John L. Howard	466-2492
59474	Toole	Shelby	John Brooks	434-5585
59038	Treasurer	Hysham	Gary J. Fjelstad	342-5211
59230	Valley	Glasgow	Dan Taylor	228-4333
59036	Wheatland	Harlowton	William Duncan	632-5614
59335	Wibaux	Wibaux	Arleigh H. Meeks, Jr.	795-2415
59103	Yellowstone	Billings	Richard Shaffer	252-0588

MTI Teleprograms Inc.

DOUBLE JEOPARDY

New Film Presents An Inter-disciplinary Approach To Helping Child-Victims Of Sexual Abuse



While the judicial proceedings in a sexual abuse case can help terminate the abusive behavior and can leverage the perpetrator into a rehabilitation program, the child-victim is often subjected to traumatic, embarrassing, and demeaning treatment. This form of victim abuse is the subject of a new 40 minute MTI film, **DOUBLE JEOPARDY.**

DOUBLE JEOPARDY is designed to sensitize helping professionals to the problems of the child-victim during the judicial proceedings. And the film's case histories demonstrate the benefits of the inter-disciplinary approach to dealing with sexual child abuse.

Key content includes:

- The need for understanding child developmental stages,
- The need to understand the dynamics of sexual abuse,
- The importance and role of the child advocate,
- Preparation for and techniques of interviewing, and
- Prosecutor case preparation and courtroom techniques.

As the system frequently operates, a child must contend with numerous insensitive interviews, disbelief, prolonged adjudication, and demeaning cross examination. **DOUBLE JEOPARDY** shows how close cooperation between the various professional agencies and specialized training of personnel can help attenuate these problems.

DOUBLE JEOPARDY is designed to provide training support for:

- Helping Services Professionals
- Prosecutors
- Medical Personnel
- Law Enforcement Personnel

DOUBLE JEOPARDY was produced by the award-winning Cavalcade Productions for the University of Washington Sexual Assault Center, Harborview Medical Center, Seattle, under an LEAA grant. This film is accompanied by a comprehensive Leader's Manual developed by the Sexual Assault Center staff.

Order your preview of this important new film today.

Formats:
16mm color/sound motion picture
3/4" U-matic Video cassette

Length:	Price:	One week rental:
40 minutes	$595	$75

Terms of payment:
net 30 days, FOB Chicago

International:
This program is available internationally. Contact MTI for distributor.

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Hosted By
PETER FALK

SCARING THE CRIME OUT OF KIDS ISN'T PRETTY...

BUT IT WORKS!

FACT: Half of all serious crimes in the United States are committed by youths 10 to 17! **Violent** juvenile crime between 1960 and 1975 **tripled!**

FACT: Existing deterrence programs or punishments seem ineffective as the number of juvenile crimes increases every year — twice as fast as adult crime!

FACT: "Kiddie crime," as it's sometimes called, includes murder, rape, armed robbery, violent assault, mugging, robbery, arson, vandalism — hardly "kids stuff."

FACT: In California, over a recent five-year period, crimes of violence committed by minors increased nearly 50%!

FACT: Virtually all adult criminals were juvenile offenders. IF ONLY THEY COULD HAVE BEEN STOPPED THEN!

FACT: 80 — 90% of the kids in THIS unique program are 'Scared Straight.' Take an hour and watch this powerful approach work.

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54 minutes, color, code #2001
16mm: $650 Video: $490 Rent: $100

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SCARED STRAIGHT

While police, politicians, and psychologists grapple unsuccessfully with the alarming epidemic of juvenile crime, a most unlikely group of men have begun a most unusual program to combat the problem.

The unlikely group of 50 men — calling themselves "the Lifers" — are all hardened criminals serving life sentences for murder and other major crimes. And the program they started is unusual and different because it works!

Twice each day, a group of 15 to 20 teenage trouble-makers and law-breakers enter the maximum security prison at Rahway, New Jersey. (Ordinarily, kids are not permitted inside adult prisons.) After a brief tour of cell-blocks and solitary confinement, the group is led to the prison auditorium stage where they are ordered by "the Lifers" to sit straight, still, and silently.

And for the next two hours, the kids come under complete control of the toughest, meanest convicts in the prison. One after another, a dozen convicts barrage the startled kids with the horrors and realities of prison life — the way it has never been told to these kids, or any of us. The homosexuality, rapes, suicides, murders — also the boredom, the bells, the brutality — it's all graphically hammered home to the kids. This "shock therapy" approach is frightening, yet compelling to watch; most importantly — it's effective.

The convicts scream, shout, swear, threaten violence — whatever it takes to scare these kids into really listening and really thinking abut the consequences of their delinquency — how they themselves are on the road to Rahway. In the session, the kids are humiliated and cut down to size. Each has his name replaced by a number which he must remember just like a convict.

Most of the kids enter the prison acting like "punks" or "tough guys," but a high percentage of these kids leave the prison quiet and sullen — with new insights and direction. The toughest of kids have been known to cry on stage, and virtually all the youngsters are shocked by what they hear. Many are literally SCARED STRAIGHT!

As candid and hard-hitting as the action it portrays, this documentary contains some explicit "street talk" and coarse language. Aimed at adult viewers, it's a powerful examination of an important topic affecting our lives and communities.

The cameras follow and profile a group of seventeen juvenile offenders — aged 14 to 18 — before, during and after their half-day at Rahway. All their experiences, emotions, and attitude changes are captured on film. Full-face to the camera, these kids are candid in describing their criminal ways and equally candid in relating how they felt after their grueling hours inside the prison. The content is startling and powerful. There's even a three month follow-up on the remarkable progress of the kids.

Crime-fighting convicts are unique, and so are the results they're achieving: 80 to 90% of the kids who visit Rahway go straight! It's a startling and encouraging statistic. If just one child were "scared straight," the program would be worthwhile, but thousands of young criminals have already experienced "the Lifers" program, and most of them have reformed!

Peter Falk as host-narrator was filmed on location, inside the prison. His location appearances create a strong sense of involvement and immediacy.

SCARED STRAIGHT! is produced, directed and written by Arnold Shapiro, five-time Emmy winner for documentary television specials he has produced, and director of program development for Golden West Television Productions.

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